COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 020014-02**

William L. Regan	Employee
Washington Group International	Employer
Argonaut Insurance Company	Insurer

REVIEWING BOARD DECISION
(Judges McCarthy, Carroll and Costigan)

APPEARANCES
Alan S. Pierce, Esq., for the employee
Shenan L. Pellegrini, Esq., for the insurer

McCARTHY, J. The insurer appeals from a decision in which an administrative judge awarded the employee § 34 benefits for a T12 spinal fracture. The insurer's arguments are subsumed by the law governing compensability for idiopathic injuries at work. We affirm the decision on that basis.

The employee suffered his injury when he had a seizure while working in his truck cabin. The burst fracture was occasioned by the effect of the employee's experiencing the seizure while secured by his seat belt and safety harness. (Dec. 4.) There is no dispute as to causal connection, as all of the expert physicians concurred that the seizure, occurring while the employee was restrained, caused the burst fracture, and the judge credited that the employee was "buckled up." (Dec. 4-6.)

Leaving aside, therefore, the issue of whether the seizure was caused by a condition of the employment – namely, an exhaust leak that flooded the truck cabin with carbon monoxide – we analyze the injury under the venerable idiopathic injury formulation. That doctrine provides:

> Where, as here, the claim for compensation is based upon the ground that the injuries sustained by the employee were caused by the physical aspects or arrangement of the place where he was required to perform his service, the particular physical set-up itself commonly constitutes a risk or hazard incident to the employment. In determining the existence of such a risk, regard must be had

> to the nature of the employment, the method by which the work is performed and the dangers attending its execution.
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> . . .
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> The place of employment may be structurally sound and in good condition and yet constitute a source of danger to one hired to work there and if the place may, in conjunction with the physical condition of the employee, be fairly said to be the efficient and operative cause of the injury, then the employee is entitled to compensation, even though some infirmity or disability not traceable to the employment may be remotely connected with the injury. . . . [T]his special danger had intervened and was the direct and proximate cause of the injury while the cause of the fall was the remote cause. The case comes within the general principle that an employee who, while suffering from an illness not induced by his employment, is injured by falling into a machine, or by falling down stairs or against a partition, is entitled to compensation when it is found that the immediate and direct cause of the injury was coming into contact with such an object and that the object was a risk or hazard incident to the employment.

Varao's Case, 316 Mass. 363, 364-366 (1944). See also Dow's Case, 231 Mass. 348, 352 (1918). See generally Caswell's Case, 305 Mass. 500, 502-503 (1940).

The application of the doctrine to the present case is obvious, and the judge's findings make this clear:

> The employee found the truck in North Weymouth with the engine running, windows up and air conditioner on. He only adjusted the steering wheel, applied the seat belt and safety harness and then drove south on Route 3A. Within a half a mile he began to feel uneasy, things were not making sense and he felt disoriented and confused. He pulled the truck to the right and *reached forward straining against the safety harness and hit the emergency (maxi) air brake button*. This is all he remembers until waking in the hospital.

(Dec. 4.) (Emphasis added.)

It is apparent from the judge's findings and the supporting evidence, that the employee's seizure – regardless of its work-relatedness – set into motion the chain of events that necessarily included the employee's forceful contact with the seat belt and shoulder strap, which in turn resulted in the burst fracture. The seat belt and safety harness stand as the "special risk" incident to the employee's job as a truck driver, thus bringing the employee's T12 fracture within the scope of c. 152 compensability. Varao's

Case, supra. See also Cusick's Case, 260 Mass. 421 (1927)(employee's epileptic seizure resulted in a fall down stair that fractured skull and caused work-related death).

The insurer's arguments regarding the lack of the employee's expert physician's qualifications and the employee's failure to show that the seizure was work-related, lose whatever legal significance they might have had in light of our disposition.

The decision is affirmed. The insurer is directed to pay employee counsel a fee of $ 1,357.64 pursuant to § 13A(6).

So ordered.

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William A. McCarthy
Administrative Law Judge

Filed: ***October 26, 2005***

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Martine Carroll
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge